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SOME DEFECTS IN TRUST COMPANIES.

The article we are publishing below from the *Central Law Journal* deals with a very interesting subject to the lawyers of our State, in which the trust companies are becoming more and more active. The article also suggests a doubt which has been entertained for a long time by many eminent lawyers in this state, namely, as to the right of the legislature to discriminate between natural and artificial persons in favor of the artificial by permitting trust companies to qualify and act as executors, administrators, etc., without giving security while requiring it in all cases of natural persons, unless the requirement is waived by the testator.

This is an age of corporative activity and the shifting of individual financial responsibility. Within the last thirty years corporate growth has been tremendous in the United States.

The laws of corporations have been made applicable to almost every phase of business activity. Companies have been formed not only for the collection of claims and indebtedness, but even for the practice of law—although in the latter instance the courts have refused to recognize them as practicing attorneys. Corporations are now found to act as receivers, as executors, as administrators, as guardians, as assignees, as personal agents, as real estate agents, as insurance agents, as trustees—usually called "Trust Companies." These are far stretches of the corporate idea. The activities of these institutions have resulted both in good and in bad results in the several lines in which they have sought to operate. The methods they pursue cannot always be commended.

The duties of an administrator, an executor, or a guardian are of a personal character. It has been the aim of courts in the past to appoint persons as administrators, executors, or guardians, not only because of their honesty and integrity, but because of their ability to handle the estate or the property of the ward. In the

case of the custody of the ward, the appointment usually was made because of the fitness of the person appointed guardian to have custody of a minor.

So in the case of an assignee, a trustee, or a receiver, the appointee was selected because of his personal fitness.

Not only was the person selected appointed because of his personal fitness, but the courts were not prone to permit one person to assume the administration of several estates, usually limiting his activities to one or two at a time so that the best results would be obtained by his undivided attention. Usually men were selected who had made a financial success of their own affairs.

Every lawyer knows of administrators and guardians who have given as close and careful attention to the administration of the business entrusted to them as if it were their own personal business. Indeed, it was rare to find an administrator or guardian who did not conduct himself in that manner. The same was true of receivers, trustees and assignees. The obligations of personal responsibility for the welfare of their trusts rested upon them as individuals; there were no divided responsibilities which so frequently result in neglect, bad management and loss.

How is it with the Practice of the Trust Companies in these lines?—Trust companies are formed for the purpose of making money for their stockholders. This is the sole motive for their formation. They are not benevolent institutions, but are thoroughly commercial. The larger their dividends the more valuable will be their stock, the more satisfied will be the stockholders, and the more likely will their managers be able to retain their positions.

The income of the trust companies in the handling of trusts or estates depends on the fees they receive as administrators, guardians, assignees, and receivers. If the income from these resources can be increased and the expenses of administration diminished, the larger will be the next dividend; or the value of their stock in the market will be enhanced thereby, because of the undivided profits remaining in the treasury.

In the very beginning the monetary interests of the trust companies are antagonistic to those of the trusts they are appointed

to administer; and it is an antagonism with which it is difficult to cope. No court can be expected, in making them allowances, to known all the "ins and outs" of the business, nor always the exact value of the services rendered. To some extent the trusts, over which these Trust Companies are put, are at their mercy.

But at this point another factor enters, which is a far more serious one than the one just mentioned, and this is the cost to the trust companies in handling the business pertaining to estates and trusts. The less the company has to pay its employees, the less the cost of administration will be to the company, and, consequently, the greater the profits. But in the use of a cheap man there is a loss of efficiency. The handling of the property of an estate, of a guardianship, of an assignment, of a receivership of a trust, requires judgment and business capacity to secure the best results; and these cannot be secured in a cheap man.

It is the practice of trust companies to secure as cheap as sistants as is compatible with the dispatch of business, although they are quick to deny this charge. A fifteen-dollar-a-week clerk is often placed in the actual charge of a difficult business, or in the winding up of an involved estate or trust, which requires the insight and experience of a trained business man—such a man as usually was secured before the trust companies came into the field. The best results cannot be thus attained; the best interests of the estate or trust cannot be thus served. Indeed, there is occasionally a manifest inclination to settle up an estate as quickly as possible, if thereby the cost to the company in handling the estate is lessened and the fees to it are the same as if the administration were longer drawn out; thus, to some extent, making a sacrifice of the estate for the benefit of the trust company.

But it is said there is the Board of Directors, who are chosen for their honesty, integrity, and business capacities, and the president for his executive ability, who oversee the business and direct the fifteen-dollar-a-week clerk what to do.

In the case of the Board of Directors there is a divided responsibility, which is often inimical to the best interests of the administration of business, not infrequently to the honesty of the transaction. All men, who have had anything to do with com-

mercial corporations, are only too well aware of this fact. And there is another factor, and that is, that men will do things in business, when acting with others as officers of a corporation, from which they generally shrink if called on personally to face the transaction. Here is the divided responsibility—the shifting of the odium of a transaction from one set of shoulders to other sets as an excuse for conduct, which the shirking individual would never do if he were solely responsible for his own acts. Besides the Board of Directors do not, as a rule, act on their own observations, but on information furnished to them by the employees of the company.

In the case of the president, or other managing officers, he too is apt to act on representations made to him by the employees in the immediate charge of the estate or trust, and, of course, the best results cannot be secured thus. But here the president is at another disadvantage. He has many things on hand. He must act with celerity and often on first impressions, in order to get through with the business of the company. Any other course would involve him in endless confusion. He cannot enter into the minute details of the estate or trust—a thing so often necessary to secure its best interest.

Where an individual of capacity, who has the best interests of the estate or trust at heart (and that is almost universally the case), is appointed administrator or trustee, all these defects are practically avoided.

Trust companies claim that the funds or property entrusted to their custody are safer than if in the hands of individuals, and they use this as an argument to secure business. But it must be borne in inind that these institutions are usually not required to give a bond to secure the faithful administration of the estate and guardianships entrusted to their care[1] while individuals are required to do so; and although individuals have been recreant

1. I am not aware whether or not it has ever been decided that a statute permitting a trust company to act as administrator or guardian without giving bond is invalid, because of the fact that individuals appointed as administrators or guardians must give bonds for the faithful accounting of the funds of their trusts. Is this not such discriminatory legislature as renders the statutes permitting trust companies to serve without giving bonds unconstitutional?

to the trusts placed in their hands, the percentage of losses is very small in comparison with the amounts administered on. There is a good deal of the "scare crow" business about this claim.[2]

Trust companies also use the argument that they pay interest on the funds of the estates in their hands, but those who have had much to do with these companies in this connection are painfully made aware of the fact that the amount of interest accounted for in final settlements is quite insignificant—usually three or four per cent, and that by no means running over the entire period that the funds have been in their custody.

But there are some things that many trusts companies—not a few—do, that are far from desirable.

One of these is the "drumming" for business. Many of them are as despicable in their methods of obtaining business as "ambulance lawyers," the only difference being the difference in the kind of business they seek. Not infrequently the body of the deceased is no more than under the sod until an officer of a trust company is ringing the door bell of his late residence and presenting to the widow and the heirs the advantages of an administration by his company. Even friends of the deceased are sought to obtain their influence with those interested in the estate. This is a complete reversal of the old order of affairs, and a course of conduct that no lawyer of any delicacy, and few of any sense of the fitness and propriety of things, is willing to pursue. It is distinctly a violation of a lawyer s code of ethics as expounded by all writers on that subject.

But often these companies are not content to wait until the de-

2. Trust companies have failed, even very large ones, to the great injury of trusts in their charge. While it is true, losses to estates and trusteeships have been occasioned by the unfaithfulness of those appointed to administer upon them, yet their administrator bonds are usually sufficient to protect the beneficiaries. Of the enormous amount of property and money involved in estate, guardianships, receiverships (really never in these) and the like, the percentage of losses is exceedingly small, although when gathered into one aggregate sum it gives the impression that such trusts are recklessly handled and constantly subject to the prey of those appointed to take charge of them. Trust companies at this point indulge in great exaggeration in setting forth their claims of alleged superiority.

mise of the owner of the property. They give out that they will write wills for nothing, and will keep them in their vaults without charge; and on such occasions the suggestion that they be appointed executors is very easily made, and usually with successful results. Of course, the fifteen-dollar-a-week employee often writes the will. But what is going to be the result if the will be a complicated one?

Nearly every trust company has an invisible connection with a bank—usually a national bank. Officers of these national banks are often on the directorate of the trust companies, or are heavy individual stockholders therein. As is well known, national banks cannot loan their funds on real estate security, but it is very easy to loan the bank's funds to a favorite trust company, which can loan them on real estate security. Thus, there is almost an evasion by the bank, through the convenience of a trust company, of the national banking act.

The officers of all trust companies do not confine their activities to the management of the financial affairs of their companies. Instances are well known where they have sought, and successfully, too, to reach the judicial bench. They have been the endorsers and backers of candidates for those high offices, and those running against such candidates have often found that the current set in favor of such persons was a very strong one to stem, not infrequently bringing about their defeat. When the candidate thus backed is successful, the reward of those officers comes in their company being appointed administrators, guardians, receivers, and the like. Lagging trust companies have thus been put to the very front row of success; and instances are known of companies whose stock greatly rose in value after the candidate thus backed had been elected judge of a probate court, for they "owned" him.

These are some of the reasons why trust companies are not as desirable in the handling of these kinds of trusts as private individuals are; and instances are not unknown where they have used their powers to wreck the estates, or to depreciate the value of their assets, while some of their favored stockholders stood ready to reap the advantages thus opened for investments. In the latter instances we have only an exhibition too common in the commercial transactions, of corporations.

There is another thing in this connection few think of. These trust companies constantly use the funds of estates (not guardianships nor trusteeships), assigneeships and receiverships in their own private business and never account for the profits. It is the law, as all know, that if an administrator use the funds of his trust in his own business or in an investment for himself, he must account for all the profits he receives, and the courts will hold him to a strict accounting. Yet trust companies do not account for such profits. They escape under the plea that they are paying interest on the funds of the estate (which is often not true), and therefore have a right to use them in their business; but the rate paid is often two and three per cent only (and then not for the full period the funds are in their custody); and this very money on which they pay this low rate of interest, they, during the period they are paying it, usually loan out at a higher rate of interest, which they convert into their own coffers, thereby making a profit out of the funds by loaning them, a thing a court would not tolerate for an instant in an individual.

These trust funds are sometimes invested in real estate adventures, in the name of some proven individual, and thereby a profit for him and the company made without either putting up a dollar of their own funds.[3]

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3. That some trust companies hold out as an inducement to persons of moderate means that if they will deposit their funds with them they will shift them so as to avoid taxation is a well-known fact.